

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-220253

DATE: November 22, 1985

MATTER OF: Hamilton Sorter Company, Inc.

DIGEST:

1. Protest against the issuance of a delivery order to higher priced Federal Supply Schedule (FSS) contractor by protester with similar FSS contract is denied where the agency reasonably determined that awardee met agency's needs and protester did not.
2. Where agency rebuts an issue raised in the initial protest and the protester fails to respond to the agency's rebuttal in its comments to the agency report, the issue is deemed abandoned.

Hamilton Sorter Company, Inc. (Hamilton), protests the issuance of delivery order No. DLA-710-85-F-1237 by the Defense Logistics Agency (DLA) to Center Core, Inc. (CCI), for modular furniture. The delivery order was issued under the General Services Administration multiple award Federal Supply Schedule (FSS) pursuant to request for quotations (RFQ) No. DLA-710-85-T-0026. Hamilton contends that the FSS furniture it offered meets or exceeds all RFQ specifications at a lower price than CCI's furniture and, pursuant to the Federal Acquisition Regulation (FAR), 48 C.F.R. § 8.405-1 (1984), it should have been awarded the contract.

We deny the protest.

Under section 8.405-1 of the FAR, an agency must place orders against the multiple award FSS which will result in the lowest overall cost alternative meeting the needs of the government. See Information Marketing International, B-216945.2, Sept. 24, 1985, 85-2 C.P.D. ¶ 325. However, FAR, § 8.405-1(a)(2) and (5) permit award at other than the lowest price if a product has one or more special features or performance characteristics necessary to meet the agency's needs not present in the lowest-priced FSS product. See Information Marketing International, B-216945.2, supra.

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The determination of the needs of an agency and of which products on the FSS meet these needs is properly the responsibility of the contracting agency, which is in the best position to know the conditions under which the supplies and equipment will be used. See A. B. Dick Co., B-219902, Oct. 17, 1985, 85-2 C.P.D. ¶ ____. Therefore, our Office will not interfere with these determinations unless they are shown to be totally unreasonable. American Sterilizer Co., B-212933, Jan. 26, 1984, 84-1 C.P.D. ¶ 122.

DLA determined that there were four characteristics which made the Hamilton furniture unacceptable to meet the agency's needs and, therefore, justified purchasing other than the lowest-cost furniture: (1) DLA needs furniture lighted by a multi-positional lamp, but Hamilton offered a light which is permanently attached to the offered cabinet; (2) the support pedestal on the Hamilton center unit limits access to parts of the work surface; (3) Hamilton furniture is limited because different size work stations cannot be mixed in the same cluster; and (4) DLA needs a variety of overhead storage units whereas Hamilton units are limited to one-panel.

Hamilton differs with the DLA justification for not purchasing the Hamilton furniture. For example, Hamilton contends that the fixed light which it attaches to its cabinets would satisfy DLA's lighting needs. DLA disagrees, however, and states that Hamilton's light will not fulfill the agency's need for multi-positional task lighting. While Hamilton contends that its lamp casts more light than CCI's, Hamilton has not shown how its lamp would satisfy DLA's stated need for multi-positional task lighting. In this regard, therefore, Hamilton has not shown that the DLA justification for the higher cost furniture is without reason. See A. B. Dick Co., B-219902, supra.

In view of our finding that DLA could reasonably determine that CCI's furniture would meet its needs for flexible lighting and Hamilton's furniture would not, we find it unnecessary to address DLA's additional justifications for purchasing the higher-priced CCI furniture.

Hamilton also protested that it was not given an opportunity to discuss its products' deficiencies prior to the award to CCI. DLA responded in its report to this allegation and Hamilton did not rebut that part of DLA's report. Therefore we consider Hamilton to have abandoned

this additional protest ground. Radionic Hi-Tech, Inc.,
B-219116, Aug. 26, 1985, 85-2 C.P.D. ¶ 230.

The protest is denied.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel